

INITIAL STATEMENT OF REASONS

CCR §§ 2051, 2052 & 2054

ADMINISTRATIVE APPEALS

RN 02-03

CIRCUMSTANCES THAT THIS REGULATORY AMENDMENT IS INTENDED TO ADDRESS

Penal Code section (§) 5076.2 authorizes the Board of Prison Terms (Board) to maintain, publish, and make available to the general public, a compendium of its rules and regulations. The purpose of this action is to establish time limits within which the Board will respond to administrative appeals submitted by prisoners and parolees. Pursuant to Title 15, California Code of Regulations (CCR) § 2050, “Any person under the Board's jurisdiction may appeal any decision of the Board which affects that person, except a decision to schedule a hearing or the denial of an appeal by the second level reviewers.”

In re Muszalski (1975) 52 Cal.App.3d 500, requires that prisoners and parolees exhaust their administrative appeal remedies before they can sue for relief with California courts. This action is designed to establish timeframes that specify when their administrative remedies will be exhausted.

In addition, the federal court in Armstrong v. Davis [United States District Court, Northern District, Case No. C 94-02307 CW] issued a permanent injunction concerning administrative appeals. It requires that the Board answer within 30 days any appeals alleging denial of accommodations for any qualified disability. Accommodations for prisoners or parolees with disabilities is presently covered in CCR § 2057.

NECESSITY FOR THE PROPOSED AMENDMENTS

Section 2051, Grounds.

This section currently provides the general grounds for an appeal which include: the decision was based on incorrect or incomplete information which, if correct or complete, might have resulted in a different decision; an error of judgment led to a decision which is unreasonable in view of the facts; and the Board did not have the legal authority to make the decision; or the decision violated the Board rules.

This amendment deletes from subsection (c) the language: “the decision is illegal because” This amendment is necessary to delete redundant language. The remaining phrase in that subsection adequately conveys the meaning, viz., “the board did not have the legal authority to make the decision.”

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Section 2052, Filing an Appeal.

This section currently provides the contents, deadline for submission, and assistance permitted concerning an administrative appeal. The prisoner or parolee must state the specific grounds for the appeal, the decision desired, and attach all necessary documents. The prisoner or parolee must state the decision desired. The prisoner or parolee may seek assistance from staff or others in preparing the appeal. The appeal must be submitted to the California Department of Corrections (CDC) appeals coordinator within 90 days of receipt of written confirmation of the decision.

The amendment to subdivision (a) reflects current style by changing “should” to “must” and breaks up existing requirements into several subdivisions. No substantive change results from the updated style change.

This amendment would add subdivision (a)(6) imposing a three-page (six one-sided sheet) limit on the length of the appeal. The paper would be limited to sizes of 8½ by 11 inches, or less, to clarify that larger paper (with possibly a longer appeal) was unacceptable. This page limit makes more specific the existing requirement that the appeal be concise. Comparison with the CDC appeal process indicates that the Board standard is 50 percent more generous than the two-page limit used successfully for years at CDC’s facilities. The limitation on size of the paper also provides substantial administrative convenience in the handling, copying, and filing of these documents. The page limit in subdivision (a)(6) would include any arguments offered in support of the appeal, e.g. a court decision or legal points and authorities. Without limiting all the arguments to a maximum size, the attachment of additional legal arguments could render the three-page limit meaningless.

Subdivision (b) is unchanged.

Subdivision (c), listing the CDC appeals coordinator as the only person authorized to receive the appeal, has been expanded to include the classification and parole representative (C&PR) and the parole appeals coordinator. Given the C&PR’s broad range of duties concerning future parole, it makes sense to permit prisoners the option of filing appeals concerning parole with C&PRs. Adding the parole appeals coordinator to the list is more convenient for parolees who may be residing a distance from any prison facility. The Board has clarified the existing concept requiring the appeal to be submitted within 90 days of receipt of the written confirmation. At times, the prisoner or parolee may receive verbal or tentative decisions from the Board. Thus, adding the element of “effective” decision indicates that the 90-day period does not start to run until he or she receives a final effective written decision. Failure to clarify this issue could lead to prisoners or parolees having less than 90 days in cases where the final effective decision varies from the proposed decision.

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Section 2054, Board Appeals Unit.

This section currently describes the types of decisions that the Board Appeals Unit may make. These include: (1) ordering a new hearing, (2) denying the appeal, (3) making a new decision if no new hearing is required and the decision will not adversely affect the prisoner or parolee, and (4) dismissing the appeal if it is filed late or concerns matters outside the Board's jurisdiction. The Board gives reasons for its appeals decisions. This section also elaborates on the time of the new hearing, the composition of the hearing panel, and sets forth procedures concerning unusual delays in holding the new hearing. The reason for any unusual delay must be provided.

Subdivision (a)(1), concerning the Board's order for a new hearing, was updated to reflect current style and simplify the grammar. Subdivisions (a)(2) and (a)(3) were unchanged. Existing subdivision (a)(4), "reserved," was deleted as unnecessary. Existing subdivision (a)(5) was renumbered as (a)(4), and the style of its citation of CDC regulations was updated. The existing provision, permitting dismissal of the appeal for failure to file within the 90-day time period, was updated to conform to the expanded timeframe discussed in § 2052. See the reasons discussed under the heading for that section, above. The proposed amendment would permit dismissal if not filed within 90-days of receipt of the "effective" decision.

New subdivision (b) has been added to cover time limits for Board decisions on appeals. While existing § 2056 provides for expedited appeals, it does not set any specific time limits. Subdivision (b) would provide that the time periods do not start until the Board has received the complete appeal. An appeal is not complete unless it meets the requirements of § 2052 as discussed above.

In the past, the Board has experienced a chronic shortage of funding for staff, particularly in the appeals area. This has resulted in delays of processing administrative appeals. The time limits selected for appeal response were based upon the relative urgency for issues affecting health, safety, or a liberty interest. The most urgent appeals would be handled sooner based upon existing criteria outlined in § 2056.

Appeals concerning the alleged denial of accommodation for disability are handled sooner than most others since the Revised Permanent Injunction in Armstrong requires that these appeals be answered within 30 days. Appeals concerning other matters may take longer, although the more urgent ones would be expedited.

The timeframes were also developed by taking into the consideration the complexities of each type of case and the delays typically encountered in obtaining documents or staff clarification from other agencies, such as CDC or local law enforcement. Some variables that affect whether the time limits selected are too high or too low are difficult

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to quantify. These include budget, staff illnesses, vacancies, or retirements affecting efficiency, and new statutes or court decisions.

Subdivision (b)(1) provides that parole revocation and revocation extension appeals shall be decided within 90 days. However, setting a timeframe any shorter than 90 days would be extremely difficult given that this type of appeal comprises approximately three-fourths of the total number of appeals. Additionally, appeals that meet the criteria in § 2056 will be expedited.

Subdivision (b)(2) provides that appeals alleging a denial in accommodation for a disability are decided within 30 days, as mandated by the Armstrong Injunction.

Subdivision (b)(3) provides that all other types of appeals shall be decided within 120 days. These include appeals brought by life prisoners, mentally disordered offenders, sexually violent predators and others. The 120-day timeframe was based upon the amount of time it takes for most appeals to go through the review process and obtain approval from the commissioners or the executive officer.

Subdivision (b)(4) provides exceptions to the above time limits for cases presenting unusual complexity, meeting the criteria to qualify for expediting, or atypical delays in obtaining cooperation from other agencies or jurisdictions. Before exceeding the general time limits, the Board shall provide the prisoner with written notification of the reasons for delay and the estimated completion time. Providing notification will divert scarce staff from the substantive work of dealing with the merits of appeals. However, the Board determined this was necessary in order to make clear that exhaustion of administrative remedies has not occurred.

Subdivision (c) concerns exhaustion of administrative remedies which is available to prisoners and parolees after they have filed an appeal as specified in § 2052 and have exhausted time limits (including extensions) specified in § 2054(b).

This amendment is necessary so that prisoners and parolees have adequate notice when administrative remedies have been exhausted. They are barred from filing suit in court unless this requirement has been satisfied. See discussion of In re Muszalski under the heading of “Circumstances,” above.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action. Board comparison of the two and three page limits for length of the administrative appeal was based upon BPT staff experience with CDC and BPT appeals spanning several decades. No written studies, reports, statistics, or documents were reviewed as part of this comparison.

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ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY

The Board must determine that no reasonable alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The portion of this proposal required by court order is not open to alternative timeframes.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The subject of this regulatory action has a direct effect on prisoners and parolees. Any impact on small business would be indirect and likely insignificant. The Board has not identified any alternatives that would lessen any adverse impact on small businesses.